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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of
Section 309(j) of the
Communications Act

Competitive Bidding

PP Docket No. 93-253

To: The Commission

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NOV 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF PAGEMART, INC.

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SUMMARY

PageMart urges the Commission to focus on its essential statutory mission: designing auction procedures most likely to serve the public interest. This requires, first, that it adopt an auction format that advances each of the four objectives outlined by Congress; and second, that the Commission respect the different needs of narrowband and broadband services. Unfortunately, many commenters recommend procedures which do not ensure the advancement of the most important of Congress' goals, a diverse and competitive market, and/or which focus only on the broadband PCS model.

The procedure best able to balance all of the objectives outlined by Congress, particularly in the context of auctions for narrowband PCS licenses, is a system of first price, sealed bidding, with simultaneous rounds for homogenous or otherwise similar groups of licenses. Sealed bidding poses none of the substantial administrative and logistical difficulties inherent in proposed electronic or oral-bidding formats. Likewise, only sealed bidding will afford medium-sized, innovative firms a realistic opportunity to compete fairly for the major markets with the handful of deep pocket firms that will otherwise dominate the process. The Commission's "safeguards" against market concentration -- preferences and bandwidth aggregation limits -- will not, by themselves, be effective.

PageMart joins with those commenters arguing for combinatorial bids as an efficient way of aggregating spectrum, especially when combined with sealed bidding on individual licenses. PageMart disagrees with those commenters opposing

sequential bidding in favor of a massive, simultaneous auction. Such "open" bidding systems -- whether oral, electronic, or even sealed, multiple bid -- badly disadvantage firms with limited resources. In the case of narrowband, the simultaneous auction would also make aggregation extremely difficult, and would place enormous planning burdens on small and medium-sized firms.

With respect to procedural issues, PageMart agrees with many commenters that the up-front payments and deposits suggested in the NPRM are appropriate. Of course, in crafting specific procedures, the Commission must not inadvertently discourage qualified applicants from participating in the bidding. Finally, as some commenters point out, the Commission may wish to reexamine the legality of its proposed forfeiture policy, which does not appear to be consistent with the longstanding statutory limitations on the Commission's forfeiture authority.

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To: The Commission

REPLY COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart"), by and through counsel,
hereby replies to the various comments filed in response to the
above-captioned Notice of Proposed Rulemaking, FCC 93-455,
released October 12, 1993 ("NPRM").

I. INTRODUCTION.

In authorizing the award of certain licenses by
competitive bidding, Congress established four key criteria to
guide the Commission's design of auction procedures.^{1/} Most
commenters, in devising their favored auction proposals, picked
and chose from among these criteria and, almost without
exception, recommended procedures that would satisfy some, but
not all, of Congress' objectives.

The objective most frequently ignored, particularly by
the industry giants, is the one most important to consumers:

^{1/} See Pub. L. No. 103-66, Title VI § 6002, 107 Stat. 387
(1993) (the "Budget Act"), to be codified in Section
309(j)(3)(A)-(D) of the Communications Act of 1934, as
amended (the "Communications Act"), 47 U.S.C.
§§ 309(j)(3)(A)-(D). See also Comments of PageMart at 3-5.

ensuring that the competitive bidding process will encourage a diverse and competitive market. Doubtless this omission was not accidental. Larger firms stand to benefit greatly from auctions that permit them to dominate the regional and nationwide markets. But unlike these private entities, the Commission cannot ignore any of the statutory goals. Rather, it must design a bidding system that appropriately balances all of the objectives specified by Congress.^{2/}

PageMart demonstrated in its initial comments that only a system of sealed bidding can achieve the aim of balancing efficiency, speed of deployment, and revenue capture with the vital public interest need for a competitive market. As is discussed in detail below, the myopic focus of the vast majority of commenters on efficiency and revenue generation provides dramatic proof of the correctness of PageMart's position.

Nearly all commenters also failed to appreciate the significant differences between narrowband and broadband PCS services. In many cases, this failure results in the

^{2/} The failure to address each of the explicit statutory goals established by the Budget Act permeates the comments submitted. For example, in a startlingly transparent effort, the Cellular Telecommunications Industry Association ("CTIA") claims that its auction proposal will best meet Congress' objectives, and then proceeds to cite only three of the four criteria set out in Section 309(j), conveniently omitting Section 309(j)(3)(B)'s requirement of "promoting economic opportunity and competition...." 47 U.S.C. § 309(j)(3)(B). See Comments of CTIA at 6. Other commenters are more candid in their analyses, but still choose to ignore those Congressional objectives that are perceived to be inconsistent with their own. To cite but one example, PacTel's outside expert -- an economist -- openly admits that the goal of a competitive marketplace was not considered in his analysis. See Comments of PacTel Corporation ("PacTel"), Attachment at 1.

recommendation of auction procedures appropriate for one type of service, but not the other. As is demonstrated below, the Commission must avoid this convenient, though mistaken, assumption that broadband and narrowband auction procedures should be identical.

II. SECTION 309(j) REQUIRES THAT THE COMMISSION ENSURE A DIVERSE, COMPETITIVE MARKETPLACE, EVEN AT THE COST OF ALLOCATIVE INEFFICIENCIES.

Numerous commenters assume -- without analysis -- a near-perfect correspondence between a firm's profitability and the social utility of the service it provides.^{3/} This undocumented assumption forms the "public interest" foundation for their auction proposals: they recommend bidding formats most likely to guarantee that licenses will be won by the firms that will generate the most profit.^{4/} The problem with this approach (apart from questionable economic analysis) is that the underlying assumption -- that the most profitable firms can be relied on to serve the public interest by supplying the most highly valued services -- is at odds with Congress' explicit views on the matter.

^{3/} See, e.g., Comments of American Telephone & Telegraph ("AT&T") at 11; Comments of Bell Atlantic Personal Communications, Inc. ("Bell Atlantic"), Attachment at 2; Comments of NYNEX Corporation ("NYNEX") Exhibit 1 at 6; Comments of the National Telecommunications and Information Administration ("NTIA"), Staff Paper at 18; Comments of Pacific Bell and Nevada Bell ("PacBell") at 2.

^{4/} It is assumed that the firm most able to profit from a given license will make the highest bid. This assumption is addressed infra.

In Section 309(j)(3)(B), Congress restated its long-standing (and, as yet, unrefuted) conclusion that marketplace forces alone will not always deliver the goods and services most beneficial to the public interest.^{5/} Thus, in the field of telecommunications, as opposed to, e.g., the sale of timber on federal lands, marketplace forces must be constrained to the extent necessary to advance Congressionally established goals.^{6/}

Many economists dismiss or downplay the consequences of market imperfections, claiming that, on balance, the "profitability equals social welfare" formula is well grounded in economic theory.^{7/} In the context of this proceeding, however, this purist view misses the point: Congress has affirmatively directed the Commission to encourage a diverse and competitive marketplace, even if the so-called "allocative efficiency" of the market is somewhat disturbed as a result.^{8/} Thus, vague references to "efficiency" and "maximizing surplus" cannot

^{5/} The existence of antitrust laws, as well as the Commission's responsibilities under Title II of the Communications Act, are evidence of this fact.

^{6/} Indeed, even the most dogmatic observer will acknowledge that the market often undervalues socially beneficial goods and services (teachers, nurses), and often over-values goods with little social utility (the list is endless). The undeniable existence of imperfect capital markets, exceedingly short time horizons, problems of valuation, irrationality, and imperfect knowledge all combine to create a market that cannot, alone, advance social goals.

^{7/} See, e.g., Comments of NTIA, Staff Paper at 18.

^{8/} See 47 U.S.C. § 309(j)(3)(B). In the NPRM, the Commission unambiguously acknowledges this fact, by observing that an auction process that seeks only to award licenses to the parties making the highest bid would result in intolerable concentration. See NPRM at ¶ 34 n.20.

substitute for a demonstration that proposed competitive bidding procedures meet clear Congressional directives.^{2/} Auction schemes that focus on efficiency alone must therefore be rejected.

A. There Is No Evidence To Support The Proposition That Awarding Licenses To The Highest Value Bidder Will Ensure The Development Of A Diverse, Competitive Market.

Most of the commenters who uncritically accept the proposition that profit maximization inherently advances the public interest conclude that licenses should be awarded to the bidders who value them most, the so-called "high value bidder" ("HVB").^{10/} HVBs are assumed to value licenses more than competitors because the services they supply will generate a greater profit from a given license. This, in turn, is presumed to be a valid indicator of the extent to which that firm's service contributes to the public interest.^{11/}

^{2/} See 47 U.S.C. §§ 151, 157, 303(g), 309(j)(3)(A)-(D).

^{10/} See, e.g., Comments of AT&T at 8; Comments of GTE at 5; Comments of McCaw Cellular Communications, Inc. ("McCaw") at 6; Comments of Paging Network, Inc. ("PageNet") at 12; Comments of PacBell at 5-6; Comments of NTIA, Staff Paper at 18; Comments of Telocator at 3.

^{11/} Even as a theoretical economic exercise, these assumptions are not necessarily correct. Awarding licenses to HVBs does not guarantee that the most highly valued services will be provided. First, as PageMart noted in its initial comments, at 7, "predatory" firms may bid on and win licenses solely to deny markets to competitors, not because the firm can turn a profit by providing service pursuant to a given license. Second, because large, deep pocket firms have better access to capital, their fixed costs are lower than those of small and medium-sized firms. Thus, a large firm could potentially make a greater profit by providing an identical or even less "valuable" service. See Comments of NTIA at 26.

(continued...)

Although awarding a license to an HVB may be "efficient" in some theoretical sense, the analysis cannot stop at that point. Only if it can be demonstrated that awarding licenses to HVBs will ensure the development of a diverse and competitive marketplace would adoption of auction procedures that exclusively favor HVBs be appropriate.

This essential point is completely disregarded by most commenters. The very few who acknowledge it at all simply claim, without analysis, that the Commission's proposals regarding "designated entities" and the bandwidth aggregation limits imposed on PCS licenses will solve the competitiveness problem.^{12/} These "safeguards" are patently inadequate.

The inability of designated entities to alter the competitive balance is self-evident. Telecommunications in general, and particularly PCS under the auctions regime, is a capital-intensive industry.^{13/} If it is assumed that licenses are awarded in a manner that ineluctably favors HVBs (except for limited grants to designated entities), it is certain that only

^{11/} (...continued)

A superficial analysis may suggest that small firms with equivalent profit potential and risk will have equal access to capital, negating the latter point. However, the overwhelming weight of authority demonstrates that capital markets are not efficient, and that the "hurdle rate" for large firms is lower than their small and medium-sized competitors. See, e.g., Comments of AT&T at 24; Comments of MCI, Attachment at 9-10.

^{12/} See e.g., Comments of CTIA at 6. See also NPRM at ¶ 34, note 20.

^{13/} See, e.g., Comments of Suite 12 Group ("Suite 12") at 9-10; Comments of Vanguard Cellular Systems ("Vanguard") at 3-4.

deep pocket firms will be able to compete successfully in the largest, most important markets. As Commissioner Barrett pointed out in his dissent to the NPRM, the designated entities generally will be limited by their resources (both economic and spectrum-based) to serving small niche markets.^{14/}

The Commission's PCS spectrum aggregation limits are no more reassuring. As PageMart demonstrated in its Comments, at 8, because of the limited spectrum available, probably the best that can be hoped for under the aggregation rules is an oligopoly: a few players holding all of the most valuable licenses (nationwide/regional) in each geographic area. This problem is perhaps most acute for narrowband PCS, because (1) the nationwide allocations lend themselves to easy aggregation, and (2) the two-way data services that will provide the bulk of narrowband PCS revenue are far more efficiently provided on a wide-area basis.

If Congress had thought that the existence of designated entities and multiple ownership rules were adequate to protect the public interest, it would not have adopted Section 309(j)(3)(B) which requires that the auction procedures be designed to counteract the natural movement toward concentrated ownership patterns. The existence of Section 309(j)(3)(B) demonstrates that Congress thought that neither preferences nor spectrum aggregation limits assure anything remotely resembling the pluralistic, competitive market that it intended. Rather,

^{14/} See NPRM, Separate Statement of Commissioner Andrew C. Barrett, at 2. See also, Comments of BellSouth at 22-23; Comments of the State of California and The Public Utilities Commission of the State of California, ("CAPUC") at 2.

designated entities will simply fill niche requirements, leaving a handful of monolithic firms to divide up the major markets.

Thus, there is no rational basis for assuming that awarding licenses to HVBs will result in the kind of marketplace mandated by Congress. In fact, as PageMart documents infra, the asserted "efficiency" of awarding licenses to HVBs provides the best evidence of the inadequacy of such procedures.

B. Only Sealed-Bidding Can Assure A Diverse And Competitive Market.

Many commenters disparage sealed bids because of "allocative inefficiencies" allegedly inherent in such systems.^{15/} This criticism is based on the fact that, in a sealed-bid format, a large firm occasionally will "shade" its bid by too much, in an effort to win a license for less than it is actually willing to pay.^{16/} As a result, the license may be won by another firm that initially bid its true economic value for the license, a value which exceeded the larger firm's "shaded" bid.^{17/}

Sealed bidding creates a potentially different outcome for the same parties than would occur in, e.g., an oral auction, because of the role information plays in sealed versus "open"

^{15/} See, e.g., Comments of NTIA at 7; Comments of PageNet at 10; Comments of Southwestern Bell at 21.

^{16/} In the theoretical literature, it is asserted that bidders will shade their bids to avoid the "winner's curse," i.e., paying more than necessary to win an auction.

^{17/} Economic value means how much the firm is willing to pay for a license. Market value means how much a firm would have to pay to get a license in an "open" market situation.

bidding systems.^{18/} As PageMart demonstrated in its initial comments, the information provided to all bidders in open auction methods permits bidders with deep pockets to win auctions by just exceeding the price ceilings of other bidders.^{19/}

On the other hand, the closed format of sealed bids affords deep pocket firms no such luxury. Instead, all parties have an incentive to bid closer to their highest estimate of the economic value of the license at issue, in order to ensure that they prevail.^{20/} To the extent that a large firm may "shade" a bid, a smaller player has a chance, as opposed to the one-sided competition presented by an open auction format. Thus, in a sealed bid system, either firms bid closer to their economic values, thereby capturing additional revenue for the government, or large bidders shade too much, giving smaller bidders an opportunity to win an important license.^{21/} Put simply, the

^{18/} "Open" bidding systems include all those auctions in which information about other parties' bids is made freely available to all bidders, i.e., oral bidding, posted sealed bids and at least some forms of electronic bidding.

^{19/} See Comments of PageMart at 7-8, 12-13.

^{20/} See, e.g., Comments of NTIA, Staff Report at 42. Experimental evidence suggests that this kind of risk aversion is likely to affect bidding behavior in sealed-bid auctions. See Comments of NTIA, Staff Report at 41.

^{21/} Some parties, such as Southwestern Bell and PageNet, argue that the sealed bid system results in dead weight economic loss because of the resources expended by parties attempting to estimate other bidders' valuations of licenses. See Comments of Southwestern Bell at 17-18; Comments of PageNet at 9-12. This effort allegedly will be made so that a bidder does not suffer from "the winner's curse."

In fact, the more likely scenario is that no party has the resources to engage in this guessing game about other firms' (continued...)

"inefficiency" of a sealed bid system is the price to be paid for increasing the possibility of a diverse and competitive market.^{22/}

Some parties fault sealed bidding because it fails to provide the necessary information for parties to make "rational" bids.^{23/} It may be correct that, in some cases, parties would be better able to value spectrum licenses based on information about how much other parties think the licenses are worth. In a start-up industry such as PCS, however, with no operational history on which to rely and in which a wide variety of technologies and service applications are possible, comparing one's own valuation of a piece of spectrum to that of other firms is likely only to produce panic. Unlike auctions for timber or undersea mining

^{21/} (...continued)

valuations -- a task that PageNet admits would be close to impossible. See Comments of PageNet at 11. Rather, the sheer enormity of the task will either discourage bid shading altogether or force rough guesses that give non-deep pocket bidders a chance at victory.

^{22/} Sealed bidding has the additional virtue of minimizing opportunities for predatory behavior. In open bidding, a large firm knows just how high it must go to eliminate a competitor, making it very inexpensive to bid on licenses sought for no other reason than to deprive others of them. Closed bidding makes such predatory behavior more costly and, therefore, less likely.

The danger of predatory bidding may be greatest in the case of narrowband PCS licenses. Given the narrower bandwidths, these licenses should draw a much lower price at auction than the broadband PCS licenses. This, in turn, lowers the outlay required for a deep pocket firm to essentially eliminate any potential competition -- a tempting prospect. The use of sealed bids is, therefore, especially important in the narrowband context.

^{23/} See, e.g., Comments of Bell Atlantic at 12; Comments of Telocator at 2.

tracts, the commodity being "sold" in this case will have a wide range of different economic values depending on the ultimate user's business plan. Thus, open bidding formats may encourage the free flow of information, but firms will be unable to utilize such data effectively. Instead, the rapid pace of bidding in open formats will likely incite panicked, irrational reactions.^{24/}

In sum, the likelihood of achieving all of the goals established by Congress is far greater under a sealed bid system than any obvious alternative. Open-bid procedures ensure that HVBs will prevail, which in turn guarantees an oligopolistic market, directly contrary to Congress' stated intent. Conversely, while sealed-bid procedures cannot guarantee a competitive market -- no auction procedure could -- at the very least they increase the likelihood of achieving that Congressionally-mandated goal, without any significant adverse consequences.^{25/}

^{24/} The one situation in which there actually may be value in having information about competitors' bids is in the context of auctions for wholly fungible licenses. Although PageMart favors a simultaneous sealed second-bid type of auction for homogenous nationwide narrowband PCS licenses, if the Commission concludes that the free flow of information would be beneficial, it could disaggregate bidding on those licenses, so that bidding occurs in sequence. This may permit a "market" price to be established early in the bidding that would inform later bids. But see Comments of PageMart at 17-19.

^{25/} For example, the record suggests that the selection of one auction procedure over another will not materially affect the amount of revenue generated. PageMart agrees with Southwestern Bell's assessment of the economic literature that, "on average, all types of auction procedures will result in approximately the same price for the same asset." Comments of Southwestern Bell at 16. While the economic consultants employed by other commenters offer a range of
(continued...)

III. SEALED BIDS ARE MORE EASILY ADMINISTERED THAN OTHER PROCEDURES.

Even if it were assumed arguendo that open bidding was as responsive as a sealed bid system to the overarching statutory concerns, sealed bidding is preferable because it guarantees a far more orderly auction process. For example, oral bidding would create a host of administrative nightmares. With over 8,000 PCS licenses, PageMart agrees with other commenters that, even under optimistic assumptions, an oral auction could take months to finish.^{26/} This delay would undermine the fast and efficient deployment of PCS, contrary to Congress' explicit directive. Moreover, unlike in Treasury or livestock auctions -- the models on which so many commenters base their conclusions about auction methodology -- the bidders for spectrum will largely be inexperienced, especially those representing small and medium-sized firms. This will magnify all of the expected logistical difficulties.^{27/}

^{25/} (...continued)

arguments about the revenue-generating characteristics of various auction methodologies, in each case, a number of assumptions about bidder behavior, the nature of spectrum licenses, and other auction dynamics must be made before any conclusions can be drawn. Depending on these assumptions, conclusions will vary. It is for this reason that the recommendations of several distinguished auctions theorists vary widely. Compare, e.g., Comments of PageNet and Bell Atlantic with Comments of BellSouth and Comments of MCI. The best course of action for the Commission -- and the one most consistent with its statutory mandate -- is to assume revenue neutrality and select procedures based on explicit Congressional directives.

^{26/} See Comments of NTIA at 11.

^{27/} There is a huge dead-weight economic loss to a system that effectively requires firms -- especially small firms -- to
(continued...)

Other proposed open systems have similar significant technical flaws. For example, PageMart agrees with other commenters that implementing untested electronic bidding methods would be a serious mistake.^{28/} First, there are security problems: the integrity of the system could be disrupted by computer hackers and unscrupulous bidders. Second, because no auction of this type or scope has ever been attempted, there is a great risk of unanticipated difficulties. Third, such a system would inherently involve greater preparation by the Commission, which is already strained by time pressures to implement the PCS competitive bidding authority. PageMart agrees with Comcast that the Commission should begin with a simpler system, with an eye to moving to electronic bidding later,^{29/} assuming both that these logistical problems can be overcome and, most important, that electronic bidding would meet all of the elements of the Congressional mandate.

^{27/} (...continued)

hire professional bidders to attend oral auctions. Conversely, sealed bids would be submitted to the Commission without the need for participants to hire an army of auction consultants.

^{28/} See, e.g., Comments of American Personal Communications ("APC") at 1, note 2; Comments of AT&T at 14; Comments of Comcast Corporation ("Comcast") at 3.

^{29/} See Comments of Comcast at 3.

IV. BIDDING SEQUENCE AND COMBINATORIAL BIDS.

A. The Results of Single Round Bidding Most Likely Would Be At Odds With The Goals Established By Congress.

As the NPRM points out, at ¶ 51, and as commenters such as the CTIA amplify, a single round in which all licenses are subject to bidding would not permit bidders to evaluate the synergistic qualities of licenses.^{30/} Likewise, in a completely simultaneous auction, the burden of assessing the value of all the various combinations of licenses available would be enormous, making efficient license aggregation difficult.^{31/} This hardship would most likely affect firms with limited resources, creating yet another bias in favor of deep pocket firms. The various simultaneous bidding options are also all open systems, with all of the disadvantages explained at length supra.

At least with respect to narrowband PCS, bidding in rounds is the superior method.^{32/} This approach would allow the Commission to achieve all of the benefits of sequenced bidding

^{30/} See Comments of CTIA at 13. The proposed electronic formats also would deprive bidders of the ability to use the results of prior rounds to reassess their valuation of licenses in later rounds. The argument against bidding by rounds -- that bidders in early rounds are at a disadvantage -- does not apply to PageMart's proposal for narrowband auctions because, in the round-by-round format, similar licenses are offered in the same round. See Comments of PageMart at 20-23. Thus, the proclaimed aggregation advantages of simultaneous bidding are captured, without the complications referred to in the text.

^{31/} PageMart contends that this difficulty with simultaneous bidding formats easily outweighs any problems connected with determining auction sequence.

^{32/} See, e.g., Comments of PageNet at 17. Several of the narrowband licenses are essentially identical, making round-by-round bidding even more attractive.

with few of the administrative difficulties.^{33/} As PageMart explained in its Comments, essentially identical licenses should be auctioned simultaneously,^{33/} to eliminate the economic distortions inherent in a system in which parties pay different prices for nearly identical goods.^{34/}

B. Combinatorial Bidding is Essential.

PageMart agrees with CTIA's suggestion that combinatorial bidding should be used to combine geography, not spectrum.^{35/} Combinatorial bidding is most sensible in this regard because the alternative -- going through a region BTA-by-BTA -- would be cumbersome and less likely to lead to the efficient aggregation of licenses.

In the context of narrowband PCS, combinatorial bidding is absolutely necessary. Although many commenters oppose such a format, most do so only for broadband PCS, on the basis that the

^{33/} See Comments of PageMart at 20-23. PageMart's proposal for narrowband bidding by rounds is similar to the broadband proposal advanced by Bell Atlantic. See Comments of Bell Atlantic at 11-13. See also Comments of GTE at 5-6.

^{33/} See Comments of PageMart at 20-23. Accord Comments of Telocator at 19; Comments of Arch Communications Group at 7, 12.

^{34/} See PageMart Comments at 17-19. Whatever bidding system the Commission ultimately selects for narrowband PCS, it should not base its decision in any way on AT&T's suggestion of using narrowband PCS as a "guinea pig." See Comments of AT&T at 10-11; Comments of McCaw at 15. First, as explained *supra*, essential differences make it inappropriate to treat narrowband and broadband services as identical. Procedures that would work well for one service may be ill-suited for the other. Second, implicit in this suggestion is the idea that all narrowband auctions will be less important than all broadband auctions, an assertion unsupported by any reasoning whatsoever.

^{35/} See Comments of CTIA at 14.

Commission has already rejected the idea of a nationwide broadband PCS license.^{36/} In narrowband PCS, the contrary is true, with eleven nationwide licenses having been established.^{37/} Unfortunately, as demonstrated in PageMart's initial comments, at 7-8, those licenses can easily be obtained by a few deep pocket firms. To ensure adequate spectrum for true nationwide competition in narrowband PCS services, aggregation of MTA's into national or supra-regional service areas must be facilitated.^{38/}

Finally, some parties oppose combinatorial bidding because it may prevent the award of licenses to individual bidders who have sought to assemble regional services BTA-by-BTA.^{39/} This argument makes little sense. It is not at all clear why any rational applicant would prefer devoting the time and expense of making dozens of BTA bids in order to assemble a regional service area, rather than submitting one combinatorial bid for that region. Forcing parties who are interested only in a regional system into a BTA-by-BTA quest would serve no identifiable public interest.

^{36/} See, e.g., Comments of McCaw at 12.

^{37/} See Amendment of the Commission's Rules to Establish New Narrowband Personal Communication Services, First Report and Order, Gen. Docket No. 90-314, ET Docket No. 92-100, FCC 93-329, released July 23, 1993, at ¶¶ 15-21.

^{38/} Unlike broadband PCS, in which both voice and data services will thrive, all but the smallest, local niche narrowband PCS providers will depend upon two-way data revenues to survive. This type of service is vastly more practical on a supra-regional or nation-wide level.

^{39/} See Comments of Telocator at 5; Comments of BellSouth at 9.

V. THE COMMISSION SHOULD ADOPT SIMPLE BIDDING AND PAYMENT PROCEDURES THAT ENCOURAGE PARTICIPATION BY ALL QUALIFIED BIDDERS.

PageMart strongly encourages the Commission to adopt bidding and payment procedures consistent with Congress' intent to encourage widespread participation in the auctions by qualified bidders. Although most procedures proposed in the NPRM are straightforward and likely to succeed in encouraging such participation, others would unnecessarily complicate the auction process and should be reformulated.

A. The Commission Should Require Only Short-Form Applications, Not Subject To A Letter-Perfect Standard, Prior To An Auction.

In its effort to discourage speculators and frivolous applications, the Commission has proposed unnecessary application procedures that may inadvertently dissuade or disqualify legitimate applicants. Specifically, the Commission should reconsider its proposal to require bidders to submit both long-form and short-form applications prior to auction.^{40/}

PageMart agrees with the overwhelming majority of commenters that prospective bidders should only be required to file a short-form application prior to participation in the auction.^{41/} This application need only contain sufficient information regarding ownership and financial resources for the Commission to make a tentative conclusion that the applicant is qualified to hold the license in question. With all of the

^{40/} See NPRM at ¶ 97.

^{41/} See, e.g., Comments of CTIA at 28; Comments of BellSouth at 35; Comments of U.S. Intelco Networks, Inc. ("Intelco") at 21; Comments of MCI at 17-18; Comments of PacBell at 23.

disincentives to speculation that are inherent in the auction process -- upfront payments, down payments, and the potential forfeiture thereof -- the additional margin of safety provided by requiring long-form applications at the outset is outweighed by the enormous waste of time, money, and effort that would be spent in preparing hundreds or even thousands of applications, only one of which will ever be reviewed on its merits. The few commentators supporting pre-auction submission of long-form applications are unable to present a compelling case for such a misallocation of resources.^{42/}

Further, short-form applications submitted by auction participants should not be subject to a "letter-perfect" standard, which was developed to weed out speculators in situations involving lotteries.^{43/} In the case of auctions, the tender of significant up-front fees and deposits will serve this same purpose in a far more potent and reliable manner. A letter-perfect standard would add little deterrence and may inadvertently disqualify serious auction participants with no countervailing public interest benefit. The Commission should reject this unwarranted formalism and permit reasonable modifications to short-form applications to correct obvious oversights and minor defects.

B. The Commission Should Not Rule On Requests For Waivers Until The Auction Has Concluded.

^{42/} See Comments of AT&T at 29; Comments of PageNet at 30-31.

^{43/} See, e.g., Comments of PacBell at 21; Comments of CTIA at 26.

PageMart agrees with other commentators that the Commission ought to discourage auction participants from seeking waivers of Commission rules.^{44/} Nonetheless, if an applicant believes that there are substantial grounds for a waiver, it should be required to file its request along with its pre-auction short-form application. In its preliminary review of that party's short-form application -- to determine its qualifications to hold the license in question -- the Commission should assume that the waiver will be granted. Then, if the party seeking the waiver wins the auction, the Commission can review the waiver request at the same time that it reviews the long-form application (and any petitions to deny).

PageMart strongly disagrees with commenters that urge the Commission to decide waiver requests prior to the auction.^{45/} No matter how compelling the case for a waiver, litigating a waiver request (and there will be litigation) will take time. One who needs a waiver in order to participate in an auction should not be permitted to delay that auction while the Commission makes a quite possibly moot decision on the merits of the request. This is especially true given that many of the parties most likely to seek waivers -- e.g., cellular licensees -- could directly benefit from the delay caused by their requests.

Like every other winning bidder under the procedures proposed in the NPRM, parties seeking waivers should risk loss of

^{44/} See Comments of PageNet at 31, n.53; Comments of MCI at 20.

^{45/} See, e.g., Comments of AT&T at 30.

their deposit if the Commission ultimately finds that the participant is "unqualified" for the license. Consistent application of the auction rules to parties requesting waivers would not be unusually harsh, and is justified by the prospect of lengthy pre-auction delays caused by optimistic, but unqualified, applicants.

C. The Up-Front Payments And Deposits Proposed In The NPRM Are Appropriate.

Like most other commenters,^{46/} PageMart supports the Commission's proposal to require, as a condition of bidding, the payment of an up-front fee in the amount of two cents per megahertz "per-pop." However, PageMart strongly encourages the Commission to set a ceiling on the total amount of the up-front fees required from any one applicant. Otherwise, using the formula proposed in the NPRM, an auction participant interested in bidding on all licenses nationwide would in theory have to post a bid bond of \$450 million as a condition of participation.^{47/}

PageMart believes that such an amount is excessive and may deter small and mid-size businesses from participating in a broad range of auctions for licenses for which they are otherwise

^{46/} See, e.g., Comments of AT&T at 33; Comments of Sprint at 16; Comments of CTIA at 30; Comments of Telocator at 13; Comments of Rochester Telephone Corporation ("Rochester Tel") at 13; Comments of Nextel Communications, Inc. ("Nextel") at 16; Comments of PacBell at 28; Comments of PageNet at 35.

^{47/} See Comments of Sprint at 16. Southwestern Bell put this theoretical maximum at \$200 million. Comments of Southwestern Bell at 40. Either estimate represents a daunting price of admission for a small or mid-size firm.

qualified. As suggested by Sprint, a cap on up-fronts payment of \$10 million seems sufficient to deter speculators without discouraging well-qualified bidders.^{48/}

PageMart also agrees with the Commission's proposal to require that the winning bidder immediately deposit with the Commission an amount equal to twenty percent (20%) of the value of the winning bid.^{49/} While some commenters argue that a ten percent (10%) deposit is sufficient,^{50/} the higher deposit requirement suggested in the NPRM certainly does not work any undue hardship on a winning bidder and demonstrates more clearly the winner's financial ability to complete its payment obligation. The full balance should be due immediately upon the Commission's order granting the application becoming final, i.e., no longer subject to administrative or judicial review.^{51/}

^{48/} See Comments of Sprint at 16. Other commentators offered similar proposals to establish ceiling amounts for up-front payments ranging from \$5 million, Comments of AT&T at 34, to \$50 million, Comments of Southwestern Bell at 40.

^{49/} NPRM ¶ 41. Sealed bids would facilitate easy submission of the 20% amount.

^{50/} See Comments of Sprint at 17; Comments of Telephone and Data Systems, Inc. ("TDS") at 21.

^{51/} NPRM at ¶ 195.